

A **M Majumder v Manilal & Sons (M)**
 Sdn Bhd & Ors

HIGH COURT (ALOR STAR) — ORIGINATING SUMMONS NO 24-49-94
MOHD HISHAMUDIN J

B 31 DECEMBER 1995

Civil Procedure — Declaration — Locus standi — Plaintiff applied for declaration on interpretation of previous court order — Plaintiff not party to order — Whether plaintiff had locus standi to apply for declaration

C *Civil Procedure — Judgments and orders — Application for declaration on court order — Order of repayment of monetary sum coupled with injunction — Whether judgment was purely a monetary judgment*

D The first defendant in the present action, was the plaintiff in another High Court suit, in which he sued for the repayment of a sum of money which he advanced to one Mahalingam ('the deceased'), from the estate of the deceased. The first defendant successfully obtained an order in the High Court against the second and third defendants, who were executors of the deceased's estate ('the High Court order').

E The High Court order, inter alia, provided for: (i) repayment to the first defendant of a sum of money 'on the security of a lien and equitable charge' over the deceased's land in the first defendant's favour; and (ii) an injunction to restrain the second and third defendants from dealing with the deceased's land. The High Court order was reversed on appeal to the then Federal Court. The first defendant's appeal to the Privy Council was allowed. The Privy Council restored the High Court order, but deleted the words 'on the security of a lien and equitable charge' ('the Privy Council order').

F The first defendant subsequently entered a private caveat over the deceased's land. The plaintiff then applied unsuccessfully to the court to remove the caveat and to transfer the deceased's land to herself. The plaintiff now applied for a declaration that on a proper interpretation of the Privy Council order, the first defendant had only obtained purely a monetary judgment against the second and third defendants.

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H **Held**, dismissing the application:

- I (1) The plaintiff was never a party to the Privy Council order. Clearly the plaintiff had no locus standi in this case (see p 657B-F).
- (2) In view of the fact that the injunction granted by the High Court order was restored by the Privy Council order, the Privy Council order could not be said to be purely a monetary judgment (see p 660B).

[Bahasa Malaysia summary]

Defendan pertama dalam kes ini, adalah plaintiff dalam suatu guaman Mahkamah Tinggi yang lain, di mana dia mendakwa untuk pembayaran balik sejumlah wang yang dia telah berikan kepada seorang yang bernama Mahalingam ('si mati'), daripada harta pusaka si mati. Defendan pertama telah berjaya memperolehi penghakiman Mahkamah Tinggi terhadap defendan-defendan kedua dan ketiga, yang merupakan wasi-wasi harta pusaka si mati ('penghakiman Mahkamah Tinggi tersebut'). Penghakiman Mahkamah Tinggi tersebut telah, antara lain, memperuntukkan: (i) pembayaran balik kepada defendan pertama jumlah wang yang terlibat 'di bawah cagaran suatu lien atau gadaian ekuiti' atas tanah si mati bagi faedah defendan pertama; dan (ii) suatu injunksi yang menyekat defendan-defendan kedua dan ketiga daripada melakukan apa-apa urusanniaga yang berkenaan dengan tanah si mati. Pada peringkat rayuan, penghakiman Mahkamah Tinggi tersebut telah diakaskan oleh Mahkamah Persekutuan pada masa itu. Defendan pertama kemudiannya merayu kepada Majlis Privy yang telah membenarkan rayuan itu. Majlis Privy telah mengekalkan penghakiman Mahkamah Tinggi tetapi telah memotong perkataan-perkataan 'di bawah cagaran suatu lien atau gadaian ekuiti' ('penghakiman Majlis Privy'). Defendan pertama kemudiannya memasukkan suatu kaveat sendirian atas tanah si mati. Plaintiff telah memohon kepada mahkamah untuk membatalkan kaveat tersebut dan untuk memindahmilik tanah si mati kepada dirinya tetapi tidak berjaya. Plaintiff kini memohon untuk suatu deklarasi bahawa atas tafsiran penghakiman Majlis Privy yang tepat, defendan pertama hanya telah memperolehi suatu penghakiman kewangan semata-mata sahaja terhadap defendan-defendan kedua dan ketiga.

Diputuskan, menolak permohonan itu:

- (1) Plaintiff tidak pernah merupakan mana-mana pihak kepada penghakiman Majlis Privy pada bila-bila masa. Adalah jelas bahawa plaintiff tidak mempunyai locus standi dalam kes ini (lihat ms 657B-F).
- (2) Berdasarkan fakta bahawa injunksi yang dibenarkan oleh penghakiman Mahkamah Tinggi telah dikembalikan oleh penghakiman Majlis Privy, maka perintah Majlis Privy tidak boleh dikatakan sebagai suatu penghakiman kewangan semata-mata (lihat ms 660B).]

[*Editorial Note:* The plaintiff has appealed to the Court of Appeal vide Civil Appeal No K02-274 of 94.]

Notes

For cases on declarations, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1104-1126.

- A For cases on locus standi, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1123–1124.
For cases on judgments and orders, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2032–2065.

- B [Editorial note: The plaintiff has appealed to the Court of Appeal vide Civil Appeal No K-02-274-94.]

Cases referred to

- Mahadevan & Anor v Manilal & Sons (M) Sdn Bhd* [1984] 1 MLJ 266
C *Mahadevan & Anor v Patel* [1975] 2 MLJ 207
Manilal & Sons (M) Sdn Bhd v Mahadevan & Anor [1986] 1 MLJ 357
Manilal & Sons (M) Sdn Bhd v M Majumder [1988] 2 MLJ 305
Manilal & Sons (M) Sdn Bhd v M Majumder [1991] 3 CLJ 2172

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Legislation referred to

Courts of Judicature (Amendment) Act 1985 s 3
Limitation Act 1953 s 21(1)
National Land Code 1965

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Manian Raju (Gunaretnam & Co) for the plaintiff.
Gan Teik Chee (Gan Teik Chee & Ho) for the first and second defendants.
The third defendant in person.

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Mohd Hishamudin J: In this application, the plaintiff prays for a declaration that the proper interpretation and the true effect of the judgment of the Judicial Committee of the Privy Council, dated 10 February 1986, in favour of the first defendant ('Manilal') in *Manilal & Sons (M) Sdn Bhd v Mahadevan & Anor* [1986] 1 MLJ 357 is that Manilal, the first defendant

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(ie the appellant in the Privy Council case), had obtained purely a monetary judgment. In other words, the monetary award granted in favour of the first defendant, Manilal, is not coupled with any other relief which is non-monetary in nature.

As set out in the first prayer, the declaration sought reads:

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Satu perisytiharan bahawa sehubungan dan bersandarkan satu penghakiman dan perintah muktamad oleh Privy Council bertarikh 10 Februari 1986 dalam perkara Mahkamah Tinggi Ipoh Guaman Sivil No 235 Tahun 1974 di antara Manilal & Sons (M) Sdn Bhd dan wasi-wasi dan pemegang-pemegang amanah harta pusaka si mati M Ratnavale, dan berdasarkan satu pentafsiran yang betul dan wajar bagi penghakiman dan perintah muktamad tersebut, defendan pertama hanya telah memperoleh satu penghakiman kewangan.

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Arguments in chambers were heard on 17 April 1994 and 7 May 1994, and the decision was given on 29 May 1994. I dismissed the application with costs. The plaintiff applied for further arguments which proceeded by way of written submissions. The court's decision on the further arguments was given on 8 November 1994. The decision confirmed the earlier decision made in chambers.

In view of the present Malaysian judicial system, perhaps it may be quite relevant at the outset to explain that, at the time of making its judgment and order, it was a transitional period for the Malaysian judicial system and the judicial committee of the Privy Council was then still the highest appellate court in the country. About a year before the judgment, the Courts of Judicature (Amendment) Act 1985 abolished all appeals to the Privy Council with effect from 1 January 1985. This 1986 Privy Council case cited (*Manilal & Sons*) was among the remaining 18 appeals heard by the Privy Council after 1 January 1985, pursuant to the saving provision (s 3) of the Act.

Before I proceed to discuss the Privy Council's judgment, I propose first to explain the background of that case as well as the plaintiff's reason for seeking the declaration. It began with an Ipoh High Court Civil Suit No 235 of 1974. The plaintiff in that case was a company, Manilal & Sons (M) Sdn Bhd, that is to say, the first defendant in the present case (the appellant in *Manilal & Sons*). There were two defendants in that suit (Mahadevan and Sandra Seger), and as will be noted, they are the second and third defendants in the present originating summons. These two defendants are brothers, and are the executors and trustees of the estate of one Mahalingam Ratnavale, deceased; and they are sued as such. In this Ipoh High Court suit, the first defendant in the present action, Manilal (ie the plaintiff in that suit) claimed for the repayment of a sum of RM229,500 from the estate of the deceased. It was alleged that Manilal had advanced to the deceased two sums of money, the first sum being RM29,500 advanced in December 1966, and the second sum being RM250,000 advanced in March 1967. The deceased repaid RM50,000 leaving a balance of RM229,500. The learned judicial commissioner who tried the case found in favour of Manilal. He also held that Manilal had established that the sums were paid to the deceased 'on the security of a lien and equitable charge', being based on the common intention of Manilal and the deceased to have a certain piece of land, namely, Lots 290 and 461, mukim of Kulim, Kedah (hereinafter referred to as the 'said land') charged to the defendants as temporary security pending the sale of certain property. Accordingly, the learned judicial commissioner made the following order:

There will therefore be judgment for the plaintiff under prayer 8(b) of the amended statement of claim as follows:

- (i) repayment of the balance sum of RM229,500 paid by the plaintiff to the deceased on the security of a lien and equitable charge in respect of Lots 290 and 461, mukim of Kulim, Kedah, with interests thereon ...;
- (ii) an injunction restraining the defendants from transferring, charging or in any way dealing with said lots;

- A The defendants in that Ipoh High Court suit, dissatisfied with the decision of the learned judicial commissioner, appealed to the then Federal Court. The judgment of the Federal Court is reported in *Mahadevan & Anor v Manilal & Sons (M) Sdn Bhd* [1984] 1 MLJ 266. The issue before the Federal Court was whether the claims in respect of both sums were statute-barred. The Federal Court held that the answer depended upon the purpose for which the sums were paid and 'upon the nature of the rights acquired by the respondents (Manilal) regarding the payments.'
- B The Federal Court held that the first sum of RM29,500 was paid as a 10% deposit for the purchase of land in which the parties were engaged in joint venture; and it also held that the transaction considered as a whole resulted in an equitable charge in favour of the respondent in the Federal Court (ie Manilal). The Federal Court, in construing the meaning of s 21(1) of the Limitation Act 1953, held that as the National Land Code 1965 did not prohibit the creation of equitable charges and liens, hence such transactions were permissible; and that the words 'other charges on land' in that subsection must include equitable charges and lien. As regards the sum of RM250,000, the Federal Court held that there was no sufficient proof that the said sum was provided for the same purpose as the earlier sum of RM29,000; and the court went to hold that the money was a personal loan to the deceased, and it had become statute barred at the time the action was commenced. So, the appeal of the appellants before the Federal Court (the defendants in the Ipoh High Court) in respect of the RM250,000 was allowed.
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Manilal, dissatisfied with the decision of the Federal Court in respect of this amount, appealed to the Privy Council. Their Lordships of the judicial committee held that since there was an extension of time for payment up to 20 December 1968, the right to sue for the balance of RM229,500 arose on 20 December 1968; and since the writ was issued on 30 June 1974, the statutory limitation of six years had not expired by the time the action was brought. Their Lordships offered no opinion on the status of an 'equitable charge' under the Malaysian Torrens system, as they felt that it was not necessary, in view of their finding on the issue of limitation. In the words of Lord Mackay of Clashfern in *Manilal & Sons (M) Sdn Bhd v Mahadevan & Anor* [1986] 1 MLJ 357 (at p 361):

- F Considerable consideration was given in the courts below to the question of whether an equitable charge, such as was founded on by Manilal in the present case, is recognized by the law of Malaysia. On this point the judgment of the Federal Court was against the respondents but since in the view they have taken of this matter the question need not be further considered their Lordships did not hear arguments from the respondents upon it. Accordingly their Lordships express no view on this question.
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- I Accordingly, the Privy Council allowed Manilal's appeal, and upheld the decision of the Ipoh High Court. However, in the Privy Council's judgment, the order of the judicial commissioner of the Ipoh High Court was restored with an amendment, that is to say, in the following terms:

For the reasons which they have given, their Lordships will accordingly advise His Majesty the Yang di-Pertuan Agong that the appeal should be allowed with costs before the Federal Court and the Board and that the judgment of the judicial commissioner should be restored *with the deletion therefrom of the words 'on the security of a lien and equitable charge in respect of lots 290 and 461, mukim of Kulim, Kedah' ...* [Emphasis added.]

Subsequent to the judgment, Manilal's (the appellant's) counsel wrote to the registrar of the Privy Council requesting a clarification from the Privy Council regarding the above paragraph in the judgment, and the registrar (of the Privy Council) in a letter (dated 31 March 1987) to the senior assistant registrar of the then Supreme Court of Malaysia gave the following clarification:

Dear Sirs

Privy Council Appeal No 10 of 1985

Manilal & Sons (M) Sdn Bhd v Mahadevan s/o Mahalingam & Anor

At the request of Mr Anthony Diamond QC, counsel for the appellants, I have sought their Lordships' advice regarding the last paragraph of their judgment in which the board advised that the judgment of the judicial commissioner should be restored with the deletion therefrom of the words 'on the security of a lien and equitable charge in respect of lots 290 and 461, Mukim of Kulim, Kedah'.

The deletion is explained in the penultimate paragraph of their Lordships' judgment where they point to the consideration given by the courts below to the question whether an equitable charge is recognized by the law of Malaysia. In their case on the appeal the respondents had submitted that such a charge was not recognized by the law of Malaysia. Their Lordships heard no argument on this aspect of the appeal, having decided that it might be disposed of in accordance with the submissions of the parties by reference to when the cause of action arose. The only question argued before and decided by their Lordships was whether the claim was statute-barred and it was in this connection only that the question of whether there was a valid charge securing the debt was relevant.

Their Lordships accordingly concluded that, in view of the dispute upon whether an equitable charge is recognized in Malaysia, it would be inappropriate to affirm the judicial commissioner's order in this respect. The reference to the equitable charge was therefore deleted.

In the circumstances it will be clear that their Lordships' decision was not an authoritative decision either way on whether or not such a charge as was alleged is recognized by the law of Malaysia.

I am sending copies of this letter to Messrs Waterhouse & Co and Messrs Philip Conway Thomas & Co, the parties' Privy Council agents in London.

Yours faithfully

—Sgd—

DHO Owen

Registrar

- A Five years later, on 1 August 1992, Manilal lodged a caveat in respect of the said land and the reason for lodging the caveat, as stated in the statutory declaration ('exh F' of encl 2), was that —

- B The applicant company has an interest in the land known as Lot Nos 290 and 461, held under SPK 1171 and SP 715 respectively, mukim of Kulim (called 'the said lands') being an equitable charge created in its favour by the late M Ratnavale on 21 March 1967 as security for the loan of RM250,000.

- C As to the reason for seeking the declaration, it is to be noted that the plaintiff in the present case, in his second prayer, prays for a declaration that the above caveat is bad in law. Regarding this caveat, Encik Manian Raju, counsel for the plaintiff, in affidavit, asserts:

- D Meskipun Mahkamah tertinggi (Privy Council) telah memutuskan bahawa tuntutan tersebut adalah bersandarkan semata-mata satu pinjaman wang dan meskipun Mahkamah tertinggi tersebut telah mengarahkan pembatalan jaminan lien dan gadaian berekuiti sehubungan Lot 290 dan Lot 461 mukim Kulim, Kedah, defendan pertama dalam saman pemula ini telah pun memasukkan kaveat terhadap tanah-tanah tersebut vide 292/1992 jilid 20 folio 46 mukim Kulim, Kedah, atas alasan bahawa defendan pertama mempunyai gadaian berekuiti terhadap tanah-tanah tersebut. Sesalanan permohonan untuk memasukkan kaveat persendirian serta pengisytiharan statutori sehubungan kaveat tersebut dengan ini dikemukakan dan ditunjukkan kepada saya dan ditandakan sebagai 'eks E'.
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- F Thus, it can be inferred that the purpose of seeking the declaration in the first prayer is to provide a foundation or basis for the second prayer. However, at the commencement of the hearing of this originating summons, counsels for both sides informed the court that, for the time being, they are only proceeding on the first prayer (ie the interpretation of the Privy Council's judgment).

Now, to appreciate fully the issue raised by the plaintiff in the present case and the Privy Council's judgment it may be of some relevance to refer to the following two cases, namely —

- G (a) a Federal Court case decided *before Manilal & Sons*; and
(b) a Supreme Court case decided *after Manilal & Sons*.

- H Case (a) is *Mahadevan & Anor v Patel* [1975] 2 MLJ 207 (hereinafter referred to as *Mahadevan*). The appellants in that case, 'Mahadevan & Anor', are the second and third respondents respectively in the present case; and the respondent, Patel, was Manilal's managing director. The facts of that case were more or less the same as the present case, only that there the issue was different. What happened was, before filing the Ipoh High Court suit in 1974, the said Patel as the managing director of Manilal had lodged a caveat in respect of the land in question (the said land), and so, the issue in *Mahadevan* was whether the first defendant had a caveatable interest in the said land. The Federal Court held that both Patel (as managing director) and Manilal had a caveatable interest in the said land.
- I In delivering the judgment of the court, Suffian LP said (at p 208):

With respect I do not think there is any merit in this appeal. The whole system of caveats is founded on the principle that they exist for the protection of *alleged* as well as proved interests. It is not for us at this stage to say whether or not the respondent or whether or not the company has a good claim at law against the appellant, but it seems clear that there is evidence which if believed at the trial of the substantive issue would establish that the respondent who was managing director of the company was acting throughout on behalf of the company in regard to the money paid to Ratnavale, and as the principle is that it is not only a person who has a right to a registrable interest in land that may enter a caveat against the land, but it is any person *claiming* title to, or any registrable interest in, any alienated land or even claiming only a right to such title or registrable interest, who may enter a caveat, in my judgment it was proper for the respondent to enter the caveat, and right for the learned judge to refuse to remove it, so that it may remain on the register until the disposal of the suit pending between the company and the appellants.

Case (b) is *Manilal & Sons (M) Sdn Bhd v M Majumder* [1988] 2 MLJ 305 (hereinafter simply referred to as *Majumder*). In *Majumder*, the appellant was Manilal and the respondent, I believe, judging from the name — ‘M Majumder’ — was the same person, who is the plaintiff, M Majumder, in the present action. But the facts of that case, apart from stating that the respondent had applied for an order to transfer the said lots (ie the said land) to herself and to remove the caveats lodged by the appellant company Manilal, do not provide any other information regarding the identity or interest of the respondent in that action. Anyway, the facts are as follows. Following the decision of the Privy Council in *Manilal & Sons*, the plaintiff in the present action (the respondent in *Majumder*) on 22 November 1986, applied to remove the caveats referred to in *Mahadevan*. The learned judge Peh Swee Chin J (as he then was) granted her application (a passage from his unreported judgment is referred to in a later part of my judgment), and the order went on to state:

And it is also ordered that para 3 of the order of the Ipoh High Court dated 22 March 1983, as restored by the Privy Council order dated 30 August 1986, imposing an injunction to restrain all dealings in Lots 290 and 461 mukim of Kulim, Kedah be and is hereby deleted ...

The issue in *Majumder* was whether it was legally proper for the judge to have made the above order. The Supreme Court decided that it was not, on the ground that the learned judge was bound by the decision of the Privy Council in *Manilal & Sons*. Lee Hun Hoe CJ (Borneo) said (at p 306):

Here the learned judge had clearly altered the order of the Privy Council by deleting the injunction. Also, if the respondent was allowed to get the land in the way she did, it would render the Privy Council decision nugatory. The right of the appellant to caveat was heard previously. The Federal Court, in dismissing the appeal in *Mahadevan & Anor v Patel* held that the company had a caveatable interest in the land and upheld the decision of the learned judge in refusing to remove the caveats. We should point out that the appeal involved the same land ie Lots 240 and 461 and that Patel

A was the managing director of Manilal & Sons (M) Sdn Bhd, the appellant in the present appeal.

First the learned judge was bound by the Privy Council decision. He had no jurisdiction to alter an order of the Privy Council. He could only act in execution of the order of the Privy Council.

B Now, reverting to the present application, as stated earlier, I had dismissed it with costs. My reasons are first, although the point was not taken up by the learned counsel for the defendants, I must say that I have not the slightest idea as to the role and the interest the plaintiff, M Majumder, has in the present action (do note that, although there is no evidence in the affidavits pertaining to the personal particulars of the plaintiff, I am, as I have said a moment ago, prepared to assume that the plaintiff is the very same 'M Majumder' who was the respondent in case (b) above — *Majumder*). She was never a party in the Privy Council case of *Manilal & Sons*, nor in the Federal Court case of *Mahadevan*. Indeed, in the present originating summons, there is no mention of the plaintiff at all in the affidavits (except for some vague reference in para 3 of the statutory declaration in exh E of encl 2, which merely states that she had lodged a caveat over the said land and that the caveat was subsequently removed by an order of the court). In fact, the plaintiff's affidavits ie encls 2 and 4 were not deposed by the plaintiff herself but by her counsel, Encik Manian Raju. Clearly, the plaintiff has no locus standi. It is, however, true that she was a party in *Majumder* (as the respondent); and also as the respondent in the relatively recent case of *Manilal & Sons (M) Sdn Bhd v M Majumder* [1991] 3 CLJ 2172 ('*Majumder 1991*') which I will be referring to shortly (and it is interesting to note that in *Majumder*, Manilal was the caveator and Majumder was seeking to remove the caveat; while in *Majumder 1991*, it is the reverse situation: the caveator was Majumder and Manilal was seeking to remove the caveat). But, merely being a party in these cases cited does not automatically confer upon her any locus standi in the present action.

Secondly, although the reference to the equitable charge and lien in the High Court order was deleted by the Privy Council in their judgment, nevertheless, in view of the fact that the injunction granted by the Ipoh High Court was restored by the Privy Council's judgment, in my opinion, it cannot be said that the judgment of the Privy Council was purely a monetary judgment. It is more than that: it is a monetary judgment coupled with an injunction. The injunction restrains the defendants/ respondents from transferring, charging or in any way dealing with the said land. I certainly would have agreed with the contention of the learned counsel for the plaintiff (that the judgment of the Privy Council was purely a monetary judgment) had the Privy Council in their judgment also deleted that part of the order of the Ipoh High Court relating to the injunction.

I But why did the Privy Council retain that part of the judicial commissioner's order pertaining to the injunction? I do not for a moment think that the Privy Council retained the injunction on the basis that it was

of the view that there was an equitable charge on the said land. The Privy Council, as we have seen, in view of the approach that they had taken, had decided not to deliberate on the issue whether the principle of equitable charge or lien is applicable in Malaysia. Instead, the Privy Council deleted the reference to the equitable charge and lien from the High Court order, and subsequently went further to explain (refer to the registrar's letter) the deletion:

Their Lordships accordingly concluded that, in view of the dispute upon whether an equitable charge is recognized in Malaysia, it would be inappropriate to affirm the judicial commissioner's order in this respect. The reference to the equitable charge was therefore deleted.

Although the Privy Council made no ruling on the basic policy issue of whether an equitable charge is recognized in Malaysia, nonetheless, in my opinion, the deletion of the reference to the equitable charge from the judicial commissioner's order has the effect of nullifying any finding by the judicial commissioner in his judgment to the effect that there was an equitable charge or lien. In other words, the intention and effect of the deletion is that, as far as the decisions of the judicial commissioner and the Privy Council are concerned, the question of equitable charge or lien does not arise.

Now, back to the question that I have just posed, with all humility I must confess that I have difficulty in following why the Privy Council, on the one hand, deleted that part of the order (of the Ipoh High Court) pertaining to equitable charge, yet on the other hand, thought it fit to retain that part of the order pertaining to the injunction. I am tempted to speculate, but as Lee Hun Hoe CJ (Borneo) said in *Majumder*, it is not for me (or any High Court judge) 'to speculate as to the effect of the order of the Privy Council (in *Manilal & Sons*)'. All that I wish to add is that although, as we have seen, the appellant in *Manilal & Sons* had taken the trouble to seek a clarification from the Privy Council regarding the deletion of the reference to the equitable charge and lien, it is somewhat unfortunate that the respondents in the same case had not thought it necessary or prudent to seek any clarification from the judicial committee regarding the retention of the injunction.

Learned counsel for the plaintiff, in support of his contention that the judgment of the Privy Council is purely a monetary judgment, referred to the judgment of KC Vohrah J in *Majumder 1991*, where at p 2175 the learned judge said:

As I understand the judgment of the Privy Council the claim of the company was purely a monetary claim and the judgment of the Privy Council proceeded on that basis.

With respect to learned counsel, the effect of the above statement must be judged in the light of the facts of that case. In *Majumder 1991*, Majumder had lodged a caveat on 13 August 1987 over the said land. Manilal applied to remove this caveat arguing, inter alia, that they (Manilal) had a prior claim in equity to the said land, in that Ratnavale had promised Patel on

A 2 November 1972 to transfer the said land to the company; and that Patel had entered a caveat on the said land on 6 November 1972 on the company's behalf and on his own behalf. The above statement of KC Vohrah J, as referred to by learned counsel, was made by the learned judge in the following context:

B *The second ground*

C As stated earlier the nature of the claim on which the respondent's application for the third caveat was based is that there was a promise given by the attorneys of Ratnavale in a letter dated 27 February 1973 to her to transfer the said lots of land to her in three months from the date of the letter if there was no repayment of the money advanced to them or incurred on their behalf by her. In other words her claim to the said lots arose in late May 1973. Counsel for the applicant company at the hearing argued that its claim to the said two lots arose on 21 March 1967, the date on which the receipt for RM250,000 was given by the common solicitors of the company and Ratnavale for the purchase of the two lots of land as a joint investment of the company and Ratnavale. I can find nothing in the decision of the Privy Council to indicate that the assertion is correct. As I understand the judgment of the Privy Council the claim of the company was purely a monetary claim and the judgment of the Privy Council proceeded on that basis.

E Clearly, what was said by KC Vohrah J, if viewed in its proper context as set out above, cannot be cited as an authority in respect of the proposition that is now before this court. Upon reading KC Vohrah J's judgment, the question whether or not the judgment of the Privy Council in *Manilal & Sons* was a purely monetary judgment does not appear to be the crux of the issue in *Majumder 1991*. Also, significantly, the learned judge did not unequivocally say that the judgment of the Privy Council was a monetary judgment. The learned judge merely opined that the claim of the company was purely monetary, and that the judgment of the Privy Council proceeded on that basis. Moreover, it is clear from the judgment that the point about the restoration of the injunction by the Privy Council was not at all raised as an issue before KC Vohrah J, and neither did the learned judge in his judgment address himself on that issue.

G Learned counsel for the plaintiff also referred to the judgment of Peh Swee Chin J (as he then was) in Ipoh High Court Originating Summons No 31-1840-86 (unreported). That part of the judgment which he quoted reads:

H The High Court order was, in fact, a mere order or judgment for the payment of money. Whatever right the plaintiff had to any claim of a non-pecuniary nature, such right had merged in the order of a judgment so that such right, if it existed, had been extinguished by an order for the payment of money only.

I If the learned judicial commissioner thought it fit to make a further order for the payment of such judgment sum to be secured by a lien or equitable charge over the said lots, the learned law lords had deemed it fit to have such order removed.

With respect to learned counsel, although the above judgment contains a forceful argument of Peh Swee Chin J, which to my mind deserves great respect, it was, however, on appeal, overruled by the Supreme Court in *Majumder* [the decision of Lee Hun Hoe CJ (Borneo) in *Majumder* has been referred to earlier in my judgment].

In conclusion, it is my judgment that, notwithstanding the deletion by the learned law Lords of the reference to equitable charge and lien from the Ipoh High Court order in their judgment in *Manilal & Sons*, nevertheless, in view of the retention of the injunction, the judgment of the Privy Council cannot be said to be purely a monetary judgment.

Application dismissed with costs.

Reported by Wong Kian Kheong

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